

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6929 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

BHIVASAN JIMANBHAI MANCHUBHAI

Versus

STATE OF GUJARAT

Appearance:

MR SUNIL K SHAH for Petitioners

MR SK PATEL for Respondent No. 1, 2

MR JIVANLAL G SHAH for Respondent No. 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 31/08/1999

ORAL JUDGEMENT

1. In this special civil application, the petitioners are praying for declaration that the decision of the respondents annexure 'K' dated 22nd December, 1988 is unreasonable, arbitrary, capricious, in contravention of law, as declared by the Hon'ble Supreme Court and also violative of Articles 14 and 16 of the Constitution. Further consequential relief has also been prayed for.

2. The facts of the case, in brief, are that the respondent No.3 issued an advertisement to make the selection on the post of Gram Sevaks and in response to the said advertisement, the petitioners applied. The select list of 12 candidates has been prepared in which the names of the petitioner are there at Sr. No.11 and 12. However, from this list, the appointments have been given by the respondents to the candidates upto serial No.7. The candidates who are there in the select list at merit No.8, 9 and 10 got job elsewhere and as such the petitioners are the only persons who have not been given the appointment. This select list has been prepared in the month of April, 1984.

3. Learned counsel for the petitioners contended that once the name of the petitioners are there in the select list, the posts are also available, the select list has also been acted upon, then the petitioners should have also been given the appointment. It has next been contended that the respondents have not given any cogent reasons not to give appointment to the petitioners.

4. None of the respondents have filed reply to the special civil application.

5. Orally, the learned counsel for the respondents submitted that the petitioners have not acquired any indefeasible right of appointment merely because their names have been placed in the select list. The respondents have acted fairly and reasonably and the appointments have been made to the extent where the posts are available. The petitioners have not been given the appointments as the posts were not available.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. I find from annexure 'A', the advertisement of the respondent No.3 inviting the applications for selection to be made on the post of Gram Sevaks No.22 of 1984 that there were only three posts to be filled in i.e. one for General category, one for SC category and one for S.T.. It is different matter that the select list of 12 candidates has been prepared but when the advertisement has been issued to fill in only three posts, the appointments could have been given on three posts only and not beyond that. In this case, the appointments have been given to seven candidates i.e. four candidates more have been appointed, but now law is

very clear that from the select list the appointments can be made on the number of the posts for which the applications were invited.

8. The petitioners have not acquired any indefeasible right of appointment merely on the ground that their names were placed in the select list. The Apex Court has held in the case of Shankaran Das vs. Union of India and Ors. reported in 1991 (3) SCC 47 that merely on empanelment of the candidates, they have not acquired any indefeasible right of appointment.

9. The respondents were well within their competence to justify that for the reasons given, their action why the select list has not been acted upon beyond the number of the candidates upto which appointments were made. Here as stated earlier, only three posts have been advertised and as against seven candidates have been appointed. The petitioners are not disputing that all these seven persons were higher in merits than them in the merit list. The claim of the petitioners for appointment on the posts of Gram Sevaks beyond three seats otherwise could not have been legally tenable but these appointments made in excess of number have not been questioned and same cannot be touched by this court. In case direction is given to the respondents to make appointment of the petitioners then what this court will do, to ask them to act contrary to the decision of the Apex Court and secondly to operate the list which otherwise could not have been operated after three candidates were given appointments therefrom. These appointments have been made long back and after so many years otherwise also I do not find any ground to give direction to the respondents to act upon this select list. After filling up of three posts, the select list automatically stands exhausted. It is different matter that further appointments have been given but this court will not direct the respondents to do any further illegality.

10. Taking into consideration the totality of the facts of this case, none of the legal or fundamental rights of the petitioners are being infringed. It is not the case where any person lower in merit than the petitioners has been given the appointment.

11. In the result, this special civil application fails and the same is dismissed. Rule discharged. Interim relief, if any, granted by this Court stands vacated. No order as to costs.

zgs/-